1958

Annie B. Evans v. Morgan Evans : Brief of Respondent

Utah Supreme Court

Durham Morris; Attorney for Respondent;

Civil No. 8802

IN THE SUPREME COURT
of the
STATE OF UTAH

ANNIE B. EVANS, as Administratrix of the Estate of William H. Evans, Otherwise Known as William Evans, Deceased,

Plaintiff and Respondent,

—vs.—

MORGAN EVANS,

Defendant and Appellant.

RESPONDENT'S BRIEF

DURHAM MORRIS
Attorney for Respondent

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CASES CITED

TEXTS CITED

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RESPONDENT'S BRIEF

STATEMENT OF FACTS

Respondent agrees with the Statement of Facts made by appellant regarding the issues in this case, with the exception that in addition to suing for an undivided one-half interest in the cattle branded $\overline{44}$ referred to in the plaintiff's Complaint, plaintiff alleged in her Complaint that the defendant had on or about August 3, 1956, and after the date of the death of William H. Evans, wrongfully sold 8 head of cattle branded $\overline{44}$ without any authority or consent of the plaintiff, or anyone representing the estate of William H. Evans, deceased, and that the

defendant had wrongfully had a check in the amount of approximately $806.00 given by the purchaser of said cattle in payment therefor, made payable to one Myrtle Littlefield, a sister of the defendant, and that defendant had wrongfully refused to account to the plaintiff for any part of the proceeds of the sale of said cattle; that the estate of William H. Evans, deceased, was the owner of an undivided one-half interest in and to said 8 head of cattle and was entitled to receive one-half of the proceeds from the sale of said cattle, and plaintiff further alleged upon information and belief that the defendant had since the date of the death of William H. Evans, deceased, wrongfully sold additional cattle branded $\overline{44}$, in which the estate of William H. Evans, deceased, owned an undivided one-half interest, and had wrongfully appropriated to his own use the entire proceeds from the sales of said cattle, and had wrongfully refused to account to the plaintiff for one-half of the proceeds thereof (Complaint Par. 5). Defendant in his Answer admitted that after the death of William H. Evans, deceased, he sold cattle, and that he has controlled the distribution of funds received from said cattle, including $806.00 which defendant had paid to Myrtle Littlefield, and admits he had refused to account to Annie B. Evans, Administratrix of the estate of William H. Evans, deceased, for any part of the proceeds from the sale of said cattle; defendant further admitted that he had sold cattle without any authority or consent of the plaintiff, and denied that such sales were wrongful, by reason of the fact that defendant claimed to be the sole and exclusive

owner of said cattle sold. (Answer and Counter-Claim Par. 5). So that these were additional issues in the case.

Respondent disagrees with the Statement of Facts made by appellant regarding the employment of counsel for the plaintiff in connection with the Evans-Page matter, and states the facts relating to said employment to be as follows: that counsel for plaintiff was employed by William H. Evans and Morgan Evans in about 1950, in connection with the enforcement of a claim held by them against D. G. Page and Verda Page for an alleged breach of a cattle Lease Agreement, Plaintiff's Exhibit 1, for an alleged failure on the part of D. G. Page and Verda Page to return to William H. Evans and Morgan Evans the cattle, which they agreed in said Lease to return to William H. Evans and Morgan Evans, Lessors, at the end of the term; that as a result of such employment a settlement was effected between William H. Evans and Morgan Evans, Lessors, and D. G. Page and Verda Page, Lessees, wherein D. G. Page and Verda Page executed a Promissory Note secured by a Real Estate Mortgage, to William H. Evans and Morgan Evans, for the sum of $4800.00, payable $600.00 per year, commencing December 27, 1950, with interest at 4% per annum, payable annually; said Promissory Note and Mortgage were left with said attorney for collection; that at the time of the commencement of this action all payments of principal and interest payable under said Note and Mortgage had been collected, and remittance made thereon to William H. Evans and Morgan Evans, less the agreed collection commission, on a 50-50 basis,

excepting the final payment of $600.00 principal, plus some interest, which had not become due on the Note and Mortgage at the time of the commencement of the action or at the time of trial. In said employment said attorney acted as attorney for both William H. Evans and Morgan Evans, in connection with a controversy in which William H. Evans and Morgan Evans were engaged on one side, and D. G. Page and Verda Page were on the opposite side of the controversy. Respondent's counsel never at any time acted as attorney for Morgan Evans alone. (T. Page 10 to 13; T. Page 164 Line 17 to Page 167 Line 21; T. Page 161 Line 6 to Page 162 Line 19).

Respondent and her counsel deny and take exception to the statements made in appellant's brief and during the trial of the action, to the effect that respondent's counsel was guilty of unethical and unprofessional conduct in producing, having identified and offering in evidence, the Plaintiff's Exhibits hereinafter more particularly referred to, which were objected to by appellant's counsel, and in accusing plaintiff's counsel of wrongfully revealing the secrets of his client (Appellant's Brief, Pages 4, 5, 6 and 7; T. Page 161).

Respondent and her counsel take exception to the following statements set forth in Appellant's Brief pertaining to the Honorable Trial Judge, before whom the case was tried: "The trial court on its own motion should have stopped the trial at that time and discharged the jury, and failing to do so has done irreparable damage to the defendant's substantive rights inasmuch as it

would now be impossible to retry this matter in Beaver County and that the volunteering of this information by counsel has now made plaintiff aware of same to where on a retrial same could be subpoened." (Appellant's Brief Page 4). "However, the trial court was never able to see this matter and ruled as though the attorney had been subpoened into court with the information." (Appellant's Brief Page 5). "After a great deal of deliberation that undersigned cannot come forth with the thought that the trial judge, that heard this matter, intentionally allowed this type of violation and disregard of the client's rights and all that an attorney holds sacred. . . ." (Appellant's Brief Pages 5 and 6). Respondent contends that there is no occasion or justification for any such statements or references being made concerning the Honorable Trial Judge who presided at the trial.

STATEMENT OF RESPONDENT'S POINTS AND AUTHORITIES

POINT 1

Appellant has the burden of pointing out the error or errors upon which appellant relies, as error on the part of the trial court is never presumed, and in this case appellant has failed to point out any error or errors on the part of the trial court in ruling upon the admissibility of evidence, or otherwise, which would require or justify a reversal or modification of the judgment of the trial court, and hence the judgment should be affirmed.

POINT 2

If the Honorable Supreme Court is required to search the record on appeal in an effort to find any ruling or rulings of the trial court which were erroneous or in an effort to find any failure of duty on the part of the trial judge, which would require a reversal or modification of the judgment of the trial court, which respondent denies, and if the entire record is so searched, then no error or errors on the part of the Honorable Trial Judge can be found which would require or justify a reversal or modification of the judgment. Respondent contends that Plaintiff's Exhibits 1, 24, 25, 26, 27, 37 and 39, objected to by appellant's counsel on the ground that they are "privileged communications," are not "privileged communications" as between Morgan Evans and William H. Evans, or between Morgan Evans and the plaintiff administratrix of the estate of William H. Evans, deceased, or between them, or either of them, and their joint or common counsel, and being non-privileged communications it was not unethical or improper for counsel for the respondents to produce said Exhibits, to have them identified and to offer them in evidence in behalf of the plaintiff, the personal representatives of William H. Evans, deceased, and that said Exhibits were properly admitted in evidence, for the following reasons:

A: Said Plaintiff's Exhibits, objected to on the ground that they are privileged communications, show on their face and by their context that they contained nothing of a confidential nature as between William H. Evans and Morgan Evans. There are no secrets or con-

fidential information contained in any of these instruments, which their joint or common counsel was expected to keep from the other. In fact said Plaintiff's Exhibits show on their face that they were intended to be the common property of both, and that the contents of said documents were intended to be communicated to both. Being non-privileged communications, either party had a right to use such documents in a suit brought by one against the other, or their personal representatives, providing they are material to the issues presented.

B: Said Plaintiff's Exhibits, objected to on the ground that they were privileged communications, were either placed with or communicated to counsel for respondent while he was employed as joint or common counsel for both William H. Evans and Morgan Evans, in a controversy in which William H. Evans and Morgan Evans were parties on one side, and D. G. Page and Verda Page were parties on the other side of the controversy, and such documents left with or communicated to their common counsel are not privileged communications as between such joint litigants, or between them and their joint or common counsel, and such documents may properly be used in evidence by or in behalf of either party in a suit between themselves, or their personal representatives.

POINT 3

The witness J. Pratt Allred was subpoenaed into court and required to bring with him and to identify documents which proved facts beyond facts admitted in the pleading, namely, documents which assisted in prov-

ing the joint ownership of the cattle in dispute by William H. Evans and Morgan Evans, and hence he was a necessary witness for the plaintiff, and defendant's objection to the cost item of $6.00 witness fee and $12.00 mileage for this witness was properly overruled and denied.

AUTHORITIES IN SUPPORT OF POINT 1

PALFREYMAN v. BATES & ROGERS CONST. CO. et al. 158 P. 2d 132, 108 Utah 142.

2. Judgment of a trial court is presumptively correct and every reasonable intendment must be indulged in favor of it, and burden of affirmatively showing error is on the party complaining thereof.

3. Reviewing court does not look with favor upon the cause of a litigant who raises points and casts them in the lap of the court for research and determination, and, if this is done, it is within discretion of the court to refuse to consider them.

BURTON v. ZIONS COOPERATIVE MERCANTILE INSTITUTION, 249 P. 2d 514, 122 Utah 360.

6. Judgment of trial court is presumptively correct, and every reasonable intendment must be indulged in favor of it, and burden of affirmatively showing error is on party complaining thereof.

REID et al. v. ANDERSON et al., 211 P. 2d 206, 116 Utah 455.

8. Appellant's counsel, asserting trial court's error, has burden of showing error, and Supreme Court has no duty to search record for error.

STARTIN v. MADSEN, 237 P. 2d 834, 120 Utah 631.

7. To entitle an appellant to prevail, he must show both error and prejudice, that is, that his substantial rights are affected and that there is at least a fair likelihood that the result would have been different.

COOMBS v. PERRY, 275 P. 2d 680, 2 Utah 2d 381.

On appeal, judgment and proceedings in the lower court are presumed to be correct and burden is upon appellant to show error.

LAWRENCE v. BAMBERGER R. CO., 282 P. 2d 335, 3 Utah 2d 247.

Every reasonable intendment ought to be indulged in favor of validity and correctness of judgment under review, and it will not be disturbed unless appellant meets his burden of affirmatively showing error.

For other Utah cases to the same effect see:
Buchanan v. Crites, 150 P. 2d 100, 106 Utah 428;
Tatsuno v. Kasai, 259 P. 318, 70 Utah 203;
Bush v. Bush, 184 P. 823, 55 Utah 237;
Murray v. Finlayson, et al., 273 P. 319, 73 Utah 232.

AUTHORITIES IN SUPPORT OF POINT 2-A

PEOPLE v. HALL, 130 P. 2d 733, California 1942.

14. To be "privileged" the communication between an attorney and client must be confidential and so regarded at least by the client at the time, and if it clearly appears that the communication was not intended by the client to be confidential, it was not privileged.

17. Where attorney represented two different clients, attorney's letter to one of them demanding an accounting for the other client was not a "confidential communication" between attorney and addressee, neither was a letter written by addressee to attorney and the other client.

RAMSEY et ux v. MADING et ux., 217 P. 2d 1041, Washington 1950.

5. Only those communications between attorney and client which are intended to be confidential are protected by statutory privilege.

ANDERSON v. THOMAS, 159 P. 2d 142, 108 Utah 252.

11. No express request for secrecy is necessary to make communications between attorney and client confidential, but such relationship alone does not raise presumption of confidentiality, and the circumstances must indicate whether, by implication, the communication was of a sort intended to be confidential. Utah Code 1943, 104-49-3(2).

CLYNE et al v. BROCK, et al., 188 P. 2d 263, California 1947.

9. Where persons have mutually employed same counsel and have discussed freely their problems in presence of one another and their counsel, reason for rule of privilege has been destroyed, since each party by such concerted action thereby has waived right to place such communications under shield of privilege.

PARNACHER et al. v. MOUNT, 248 P. 2d 1021, Oklahoma 1952.

5. The statutory rule that attorney is incompetent to testify concerning communications made to him by client in such relation is inappli-

cable to such communications openly made in third persons' presence, but communications, to enjoy protection of statute, must be made in confidence of relation and under circumstances implying that they should ever remain secret.

HILL v. HILL, 107 P. 2d 597, Colorado 1940.

3. Communications made to an attorney by client for purpose of being conveyed by attorney to others are not "privileged communications" within contemplation by statute concerning testimony of attorneys as to communications by clients.

AUTHORITIES IN SUPPORT OF POINT 2-B

CUMMINGS v. SHERMAN, et al., 132 P. 2d 998, Washington 1943.

6. Generally, where two or more clients employ the same attorney in the same matter, communications made by them in relation thereto are not "privileged communications" inter sese, since by selecting the same attorney each party "waives" his right to place those communications under the shield of professional confidence.

Language of the Court: (6) The general rule is stated in 28 R.C.L. 566, Sec. 156, as follows: "When two or more clients employ the same attorney in the same matter, communications made by them in relation thereto are not privileged inter sese. By selecting the same attorney, each party waives his right to place those communications under the shield of professional confidence. The reason assigned for the rule is that, as between the clients, communications made for the mutual benefit of all, lack the element of confidentiality which is the basis of privileged communications. Ordinarily the attorney for both parties is not the

depositary of confidential communications from either party which ought to be withheld from the other. . . ."

CROCE v. SUPERIOR COURT IN AND FOR CITY AND COUNTY OF SAN FRANCISCO, 68 P. 2d 369, California 1937.

2. When two or more clients employ the same attorney in the same business, communications made by them in relation to such business are not privileged inter sese, and such communications are not privileged as between any one of the parties and the attorney.

Language of the Court: (2) But it appears to be well settled, as stated in Thornton on Attorneys at Law (vol. 1, p. 183), that: "When two or more clients employ the same attorney in the same business, communications made by them in relation to such business are not privileged inter sese; nor are such communications privileged as between any one of the parties and the attorney. It is the secrets of the client which affect his right that the law does not permit the attorney to divulge. By selecting the same attorney, and making their communications in the presence of each other, each party waives his right to place those communications under the shield of professional confidence." (Citing many cases) . . . Therefore, in the present case the communications made by parties united in a common interest to their joint or common counsel, while privileged against strangers, are not privileged as between such parties nor as between their counsel and any of them, when later they assume adverse positions.

JONES ON EVIDENCE Vol. 3, Sec. 754, at Page 1362:

Where several persons have employed the same attorney to act for them, their communications to him are not ordinarily privileged inter sese.

58 Am. Jur. Sec. 496, Page 277:

Sec. 496. — Suits between Clients or Consultants. — When two or more persons employ or consult the same attorney in the same matter, communications made by them in relation thereto are not privileged inter sese. By selecting the same attorney, each party waives his right to place those communications under the shield of professional confidence. Either party may introduce testimony concerning the same as against the other, or his heirs or representatives. The reason assigned for the rule is that, as between clients, communications made for the mutual benefit of all lack the element of confidentiality which is the basis of privileged communications.
To the same effect see: 97 C.J.S. Witnesses 281, page 795.

ARGUMENT

ARGUMENT IN SUPPORT OF POINT 1

As shown by the authorities above cited in support of Point 1, the appellant has the burden of affirmatively showing error on the part of the trial judge, and if appellant fails to do so the judgment should be affirmed. The appellate court is not required to search the record on appeal in an attempt to find error. Yet in this case appellant's counsel has failed to point out any ruling or rulings of the trial court on the admission of evidence, or otherwise, which appellant contends are erroneous.

Appellant's counsel has raised no objection to any of the rulings of the trial court on the admissibility of some 46 Exhibits which plaintiff offered, and which were received in evidence, and has raised no objection on this appeal to any other ruling of the trial judge. Appellant's counsel has raised no objection to sufficiency of the evidence to support the verdict of the jury and the judgment of the trial court. On the upper half of Page 5 of Appellant's Brief, appellant's counsel refers to approximately 113 pages of the transcript, and doubtless desires that the appellate court search these pages in an effort to find some error on the part of the trial court. Appellant's counsel states after referring to said extensive portions of the transcript, "Objections were made at various places on the basis of an existing attorney and client relationship." But appellant's counsel does not allege or point out any claimed error on the part of the trial judge in ruling on the admissibility of the documents objected to.

ARGUMENT IN SUPPORT OF POINT 2

If the Honorable Supreme Court is required to pass on the admissibility of Plaintiff's Exhibits 1, 24, 25, 26, 27, 37 and 39, objected to on the ground that they were "privileged communications," then the court must conclude that said Plaintiff's Exhibits were not "privileged communications" FIRST because said Exhibits show on their face and by their context that they contained nothing of a confidential nature between William H. Evans and Morgan Evans, and SECOND that such communications were either placed with or communicated to

the common counsel of William H. Evans and Morgan Evans, and as such were not privileged communications between them, or between either of them and their joint or common counsel.

Plaintiff's Exhibit 1, objected to on the ground that it is a privileged communication, is a Lease of 33 head of cattle, being a part of the Evans' herd branded $\overline{44}$, made and entered into between William H. Evans and Morgan Evans, Lessors, and D. G. Page and Verda Page, Lessees. The Lease is signed by all parties to the Lease. Certainly this Lease is the common property of William H. Evans and Morgan Evans, or their personal representatives. The instrument contains no secrets or confidential information to be withheld from any party to the Lease, and is not a privileged communication between William H. Evans and Morgan Evans, or between them, or either of them, and their joint or common counsel who was employed in connection with the enforcement of the Lease. Appellant's counsel, in making an objection to the admission of Plaintiff's Exhibit 1 in evidence, accused respondent's counsel of "highly improper and highly unethical" conduct in producing and offering this Exhibit in evidence. (T. page 161, Lines 9 to 17). Such accusations were absolutely false and groundless. The Lease objected to was so clearly admissible in evidence to aid in establishing the joint ownership by William H. Evans and Morgan Evans of the cattle branded $\overline{44}$ that this was beyond argument. The document did not bear any resemblance of a privileged communication between William H. Evans and Morgan Evans, or between either of

them, and their joint or common counsel. It was neither unethical nor improper for respondent's counsel to produce this Lease, to have it identified and to offer it in evidence, and by making the wholly unwarranted personal attack above referred to upon respondent's counsel, was not appellant's counsel violating the Rules of Professional Conduct of the Utah State Bar requiring that all personalities between counsel be scrupulously avoided, and requiring professional courtesy and respect be shown by one member of the bar to another (Revised Rules of Professional Conduct of the Utah State Bar Rule III, Sec. 17).

Plaintiff's Exhibit 24, objected to on the same ground, is a letter dated Feb. 1, 1952, written by W. H. and Morgan Evans to Morris & Matheson, Attorneys, of which firm counsel for respondent in the present action was then a member, regarding the Evans-Page item above referred to, in which it is stated among other things "as we have to buy hay for our cattle." This letter is in the handwriting of Morgan Evans and is signed W. H. and Morgan Evans. The letter shows on its face that it was written in behalf of both William H. Evans and Morgan Evans, and that said letter contains no confidential information as between William H. Evans and Morgan Evans, and hence it is not a privileged communication as between William H. Evans and Morgan Evans and their joint or common counsel.

Plaintiff's Exhibit 25, objected to on the same ground, is a letter written by Morgan Evans regarding the Evans-Page matter above referred to, to the joint

or common counsel for William H. Evans and Morgan Evans, in which Morgan Evans stated among other things, "We have Record's to show where we had Registered Bulls with our cattle for over 20 years. You can call any cattle dealer and look at our cattle at Adamsville, and see the grade of cattle we have." This letter shows on its face that it was written by Morgan Evans for and in behalf of both Morgan Evans and William H. Evans, and shows that it contains no information of a confidential nature which was to be withheld by the common counsel from either William H. Evans or Morgan Evans. Both William H. Evans and Morgan Evans, or their personal representatives, had a right to access to this letter, and to know the contents thereof at any time. Such letter is not a privileged communication as between William H. Evans and Morgan Evans, or between them, or either of them, and their common counsel.

Plaintiff's Exhibit 26, objected to on the same ground, is a letter written by Morgan Evans regarding the Evans-Page matter above referred to, to the joint or common counsel for William H. Evans and Morgan Evans in connection with said transaction regarding the division of the collections made by such joint counsel on the Note and Mortgage made by Gary Page and wife between William H. Evans and Morgan Evans (T. Page 178, Lines 2 to 24). In this letter Morgan Evans wrote among other things, "While thinking it over probably best to let him have his 50 per cent, and you can send me my 50% I will half to take a chance on the rest of his share of the expense money." This Exhibit contains no in-

formation which was intended by the writer to be kept secret from William H. Evans, or his personal representative. In fact the subject matter of the letter is such that it was intended as common information to both William H. Evans and Morgan Evans, and was in no way intended as containing privileged information as between William H. Evans and Morgan Evans, or between them or either of them, and their common counsel.

Plaintiff's Exhibit 27, objected to upon the same ground, is a letter dated January 12, 1954, written by Morgan Evans and W. H. Evans to Morris & Matheson, Attorneys, of which firm counsel for respondent in the present action was then a member, about the Evans-Page matter above referred to. This letter is signed Morgan and W. H. Evans, in the handwriting of Morgan Evans (T. Page 175). This letter shows on its face that it was intended to be the common property of both William H. Evans and Morgan Evans, and that it contains no secrets or confidential information intended to be withheld by their common counsel from either of them. This letter is not a privileged communication between William H. Evans and Morgan Evans, or their personal representative, or between them or either of them and their common counsel.

Plaintiff's Exhibit 37, objected to upon the same ground, is a check made by Durham Morris, Trustee, to William H. Evans and Morgan Evans, dated February 17, 1953, for $450.00, in connection with the Evans-Page matter above referred to. This check shows on its face that it was issued to William H. Evans and Morgan

Evans, payees, and is endorsed by both of them. (T. Pages 225-228, and Pages 255-257). Certainly this is not a privileged communication as between William H. Evans and Morgan Evans, or as between them, or either of them, and their common counsel.

Plaintiff's Exhibit 39, objected to upon the same ground, is a check made by Durham Morris, Trustee, to William H. Evans and Morgan Evans, dated March 2, 1954, for the sum of $450.00, in connection with the Evans-Page matter above referred to, and was endorsed by both payees (T. Page 222, Lines 9 to 24). This Exhibit is in the same category as Plaintiff's Exhibit 37.

The materiality of the Plaintiff's Exhibits above referred to, objected to upon the ground that they were privileged communications, is beyond argument. The defendant and appellant, Morgan Evans, in his Answer denied that William H. Evans owned any interest whatsoever at the time of his death in any cattle branded $\overline{44}$ referred to in the Plaintiff's Complaint (Defendant's Answer and Counter-Claim, Par. 2), and the defendant testified at the trial that William H. Evans never at any time owned any interest in any cattle branded $\overline{44}$ (T. Page 354, Lines 7 to 12; T. Page 447, Lines 8 to 11; T. Page 447, Lines 8 to 11). The Plaintiff's Exhibits above referred to, objected to on the ground that they were privileged communications, were offered in evidence, with other proofs, to establish the continuous undivided 50-50 ownership of the cattle branded $\overline{44}$ by William H. Evans and Morgan Evans for many years prior to the date of the death

of William H. Evans, and to prove the absolute falsity of the testimony of Morgan Evans above referred to.

Being non-privileged communications, and being material evidence in support of respondent's claim of ownership of an undivided one-half interest in the cattle branded $\overline{44}$, it was not improper for respondent's counsel to produce, to have identified and to offer in evidence the Plaintiff's Exhibits above referred to, and the Honorable trial judge committed no error in admitting them in evidence and in submitting the case to the jury. It would most certainly have been an error on the part of the trial judge to have refused to submit the case to the jury.

ARGUMENT IN SUPPORT OF POINT 3

Appellant's counsel has argued that because the defendant and appellant admitted in his Answer and Counter - Claim that the defendant and the decedent, William H. Evans, were joint owners of the grazing permits for 20 head of cattle referred to in the Plaintiff's Complaint, that J. Pratt Allred was an unnecessary witness, and the $6.00 witness fee and $12.00 mileage fee of said witness should have been disallowed. However, the witness J. Pratt Allred was subpoenaed to establish facts beyond the said admission in said pleading. The defendant and appellant had denied in his Answer and Counter-Claim that William H. Evans owned any interest in the cattle branded $\overline{44}$, and the witness J. Pratt Allred was subpoenaed and required to bring with him all applications for grazing permits filed by William H. Evans and/or Morgan Evans with District Office of District

No. 3 Utah, Bureau of Land Management, covering the period from 1942, including the year 1956, and was required to also bring with him copies of all grazing permits issued to William H. Evans and/or Morgan Evans during said period of time. Said witness did bring with him 7 applications for grazing permits, which stapled together were marked Plaintiff's Exhibit 32. These applications were the joint applications of W. H. and Morgan Evans for permits to graze cattle on government land, covering the period of time from 1942 down to and including the year 1956. These instruments shows on their face that they were joint applications of William H. Evans and Morgan Evans over said entire number of years. The witness J. Pratt Allred also produced and identified 6 grazing permits, which were issued to W. H. and Morgan Evans to graze cattle on government land from the year 1942 down to and including the year 1956. These were stapled together and marked Plaintiff's Exhibit 31. These documents produced and identified by the witness J. Pratt Allred, and properly admitted in evidence, were material evidence in establishing joint ownership by William H. Evans and Morgan Evans of cattle used in filling the permits, which ownership was a major issue in this case. If these men did not jointly own cattle, why did they over the years above mentioned jointly make application for, and jointly obtain permits to graze cattle on the public domain. The Exhibits produced and identified by the witness J. Pratt Allred were very material in establishing the joint ownership of the cattle branded $\overline{44}$, by William H. Evans and Morgan Evans,

during the periods of time covered by these applications and grazing permits, including the year when William H. Evans died, namely, 1956. The Court properly overruled and denied defendant and appellant's objections to the cost item above referred to.

CONCLUSION

The appellant having failed to show any error on the part of the Honorable trial Judge in ruling upon the admissibility of evidence, or otherwise, which would require or justify the reversal or modification of the judgment of the trial Court, the judgment should be affirmed.

Respectfully submitted,

DURHAM MORRIS
Attorney for Respondent